

DECLARING THE CUSTOMS COURT TO BE A CONSTITUTIONAL COURT

JUNE 13, 1956.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany S. 584]

The Committee on the Judiciary, to whom was referred the bill (S. 584) to amend title 28, United States Code relating to the Customs Court, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the proposed legislation is to declare the Customs Court to be a constitutional court and to authorize the temporary assignment of judges of the Customs Court to a district court and to also provide for the temporary assignment of a district judge to serve as a judge of the Customs Court.

GENERAL STATEMENT

The United States Customs Court is a court of the United States under section 451 of title 28 of the United States Code and the judges of said court are judges of the United States. The court consists of nine judges appointed by the President with the advice and consent of the Senate. Not more than five of such judges shall be from the same political party. The chief judge is designated by the President and the officers of the court are located at the port of New York. The judges hold office during good behavior and each receives a salary of \$25,500 a year.

The Customs Court, as it is now constituted, has been classified as a legislative court. Under the terms of the proposed legislation, however, section 251 of title 28 of the United States Code would be

amended so as to declare the United States Customs Court to be a constitutional court, that is, a court established under article III of the Constitution of the United States. The Customs Court handles cases which very properly come within the judicial power of the United States as set forth in article III, which provides that such judicial power shall extend to controversies to which the United States shall be a party. Thus, there can be no doubt that the Customs Court should be a constitutional court. Similar legislation was enacted in the 83d Congress establishing the Court of Claims to be a constitutional court (Public Law 158, July 28, 1953, title 28 U. S. C. 171).

The enactment of this proposal will remove any doubt upon points of law and declare which of the powers Congress was intending to exercise when the court was created.

The Customs Court, and its predecessor, the United States Board of General Appraisers, has jurisdiction of a class of cases in law which arise under the Constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority. This subject matter has always been a type of case at law to which the judicial power extended by virtue of article III of the Constitution of the United States. The custom cases within the jurisdiction of the court have also been controversies to which the United States was a party and to which the judicial power attached.

There has never been any revisory power in the executive or legislative branch of the Government over the judgment of the court or its predecessor, the Board of General Appraisers. The judgments of the court have always been final and conclusive and binding on all parties interested, including the United States and all of its officers.

Thus the committee is of the opinion that this legislation should be enacted to remove all doubt as to the status of the Customs Court as a court established under article III of the Constitution.

Section 2 of the bill provides that the Chief Justice of the United States, upon presentation of a certificate of necessity from the chief judge of the Customs Court, may assign temporarily any district judge to serve as a judge of the Customs Court. Accordingly, it amends section 292 of title 28 of the United States Code.

Section 3 of the bill amends section 293 of title 28 of the United States Code to provide that the Chief Justice of the United States may assign temporarily a judge of the Customs Court to perform judicial duties in any district court when the chief judge or circuit justice of a circuit certifies the need for such services. This section also provides that no assignment of a judge of the Customs Court may be made without the consent of the chief judge of that court.

These provisions provide a method whereby the overall manpower of the Federal judiciary may be utilized to meet specific congested calendars. The enactment of the proposal would add nine new judges to the Federal judicial personnel who could be assigned temporarily to alleviate congestion and delay in the disposition of cases throughout the country.

Section 4 of the bill merely provides that this legislation should not be construed so as to limit or alter the jurisdiction conferred upon the United States Customs Court by any provision of law. The committee therefore recommends favorable consideration of the bill S. 584.

Attached hereto as a part of the report is a letter dated July 29, 1955, from the Department of Justice on an identical bill, H. R. 4940, and also a supplementary letter from the Department of Justice, dated March 6, 1956, addressed to the Honorable Irvin C. Mollison, Judge of the United States Customs Court. The report of the Administrative Office of the United States Courts which is attached hereto indicates that the Judicial Conference of the United States has approved this legislation.

There is also attached as a part of this report a copy of a letter from the Treasury Department dated July 2, 1954, which reports that the Department would have no objection to the enactment of the proposed legislation.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, July 29, 1955.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 4940) to amend title 28, United States Code, relating to the Customs Court.

The bill would amend section 251, title 28, United States Code, so as to declare the United States Customs Court to be a court established under article III of the Constitution of the United States. Also, the bill would provide for the assignment by the Chief Justice of the United States of district judges to serve on the Customs Court and judges of the Customs Court to serve in district courts.

Whether the bill should be enacted involves a question of policy concerning which this Department prefers to make no recommendation. There are certain aspects of the proposed legislation however with respect to which the committee may wish to give further consideration.

In this bill, the position taken seems to be that the distinction between a legislative and a constitutional court is a matter of language. In this connection attention is called to the statement of the Supreme Court in *Ex parte Bakelite Corporation* (279 U. S. 438, 459), that it is a mistake to assume that "whether a court is of one class or the other depends on the intention of Congress * * * the true test lies in the power under which the court was created and in the jurisdiction conferred."

With respect to the Customs Court specifically and with reference to the change from a Board of Appraisers to a court, the opinion in the Bakelite case states (pp. 457-8):

"Formerly it [the Customs Court] was the Board of General Appraisers. Congress assumed to make the board a court by changing its name. There was no change in powers, duties, or personnel. The Board was an executive agency charged with the duty of reviewing acts of appraisers and collectors in appraising and classifying imports and in liquidating and collecting customs duties. But its functions, although mostly quasi-judicial, were all susceptible of performance by executive officers and have been performed by such officers in earlier times."

Another problem raised by the proposal relates to the effect which

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enactment of the measure would have upon the status of the present members of the Customs Court.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., March 6, 1956.

Hon. IRVIN C. MOLLISON,
United States Customs Court,
201 Varick St., New York, N. Y.

DEAR JUDGE MOLLISON: This is in further reply to your letter to the Attorney General of January 26 concerning the Department's report to the House Judiciary Committee on H. R. 4940, a bill relating to the Customs Court.

Your letter and the scholarly memorandum you enclosed have been carefully considered. I think that you have made a very able presentation of the arguments in support of your position, and I suggest that the memorandum should be submitted to the committee for its use in the consideration of the measure.

The Department's report on this bill, as was true in the case of its report on the Court of Claims bill, stated that the enactment of the proposal involved a question of policy upon which we preferred to make no recommendation. In submitting our comments to congressional committees we have felt that we should call attention to court decisions which they might desire to examine in their study of the legislation. For that reason, as the opinion in the Bakelite case made specific reference to the Customs Court, the pertinent language of the decision was set forth in the letter. This was only for the information of the committee and not for the purpose of opposing the bill.

Your letter calls attention to the paragraph of the Department's report which refers to a possible problem involving the status of members of the court if the proposal should be enacted. The purpose of this comment was to call to the committee's attention the possible effect upon the tenure of the present members of the court if the legislation should be construed as changing the character of the court. There was no intention, I assure you, to imply that the enactment of the bill would necessarily result in changing the nature of the court.

You are at liberty to send a copy of this letter to the committee.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
Washington, D. C., June 15, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: The bill about which you have inquired of me on June 6, 1955 (H. R. 4940), would amend provisions

of title 28 of the United States Code relating to the United States Customs Court. It would amend section 251 providing for the appointment of judges of the court by adding a provision declaring it to be a court "established under article III of the Constitution of the United States." It would amend section 292 of title 28 which now provides for the temporary assignment of district judges to sit outside of their districts by providing for the assignment by the Chief Justice of the United States under specified conditions of a district judge to serve as a judge of the Customs Court. Also it would authorize the Chief Justice of the United States to assign temporarily a judge of the Customs Court under specified conditions to perform judicial duties in a district court.

A somewhat similar bill, although differing in form, was introduced in the 83d Congress as H. R. 6919. The Judicial Conference of the United States at its annual meeting in September 1954 upon a report of its Committee on Revision of the Laws, of which Circuit Judge Albert B. Maris of Pennsylvania is the Chairman, approved that bill with a reservation that it expressed no view on the question whether the declaration that the United States Customs Court was a court established under article III of the Constitution of the United States would be constitutionally effective. The committee stated that it regarded that as a judicial question for determination by the Federal courts if it arose and not within the competence of the Judicial Conference or its committees (pp. 27-28 of the September 1954 report of the Judicial Conference). The pending bill may therefore be regarded as meeting the approval of the Judicial Conference of the United States with the reservation that no opinion is expressed concerning the effect of the amendment of section 251 of title 28 declaring the court to be a court established under article III of the Federal Constitution.

With kind regards, I am,

Sincerely yours,

HENRY P. CHANDLER.

JULY 2, 1954.

HON. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 14, 1954, requesting a statement of this Department's views on S. 2975, to amend title 28, United States Code, relating to the Customs Court.

Section 1 of the proposed legislation would amend the Judicial Code to provide that the United States Customs Court is to be a court established under article III of the Constitution of the United States. Sections 2 and 3 of the bill would amend the Judicial Code to provide that the Chief Justice of the United States, upon a showing of necessity, may designate members of the Customs Court to act as district judges and members of the district courts to act as judges of the Customs Court.

This Department would have no objection to the enactment of the proposed legislation.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italics:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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CHAPTER 11.—CUSTOMS COURT

Sec. 251. Appointment and number of judges; offices

The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record known as the United States Customs Court. *Such court is hereby declared to be a court established under article III of the Constitution of the United States.* Not more than five of such judges shall be appointed from the same political party.

The President shall designate from time to time one of the judges to act as chief judge.

The offices of the court shall be located at the port of New York.

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CHAPTER 13.—ASSIGNMENT OF JUDGES TO OTHER COURTS

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Sec. 292. District judges

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(f) *The Chief Justice of the United States may upon presentation to him by the chief judge of the Customs Court of a certificate of necessity, designate and assign temporarily any district judge to serve as a judge of the Customs Court.*

Sec. 293. Circuit or district judges to Court of Customs and Patent Appeals

The Chief Justice of the United States may, upon presentation to him by the chief judge of the Court of Customs and Patent Appeals of a certificate of necessity, designate and assign temporarily any circuit or district judge to perform such duties as judge of the Court of Customs and Patent Appeals as he is willing to undertake.

The Chief Justice of the United States may designate and assign temporarily a judge of the Customs Court to perform judicial duties in a district court in any circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

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Sec. 295. Conditions upon designation and assignment.

No designation and assignment shall be made without the consent of the chief judge or judicial council of the circuit from which a judge is to be designated and assigned. *No designation and assignment of a judge of the Customs Court in active service shall be made without the consent of the chief judge of such court.*

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made.

The Chief Justice of the United States, a circuit justice or a chief judge of a circuit may make new designations and assignments in accordance with the provisions of this chapter, and may revoke those previously made by him.



1. The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science. The author discusses the various theories of the origin of life, and shows that the most plausible is the theory of spontaneous generation. This theory is based on the fact that life is a complex of many different parts, and that these parts are all found in the same place. The author also discusses the theory of evolution, and shows that it is based on the fact that life is a complex of many different parts, and that these parts are all found in the same place.